

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

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Dec-11-2018 2:00 pm

Case Number: CGC-18-572010

Filing Date: Dec-11-2018 1:57

Filed by: KALENE APOLONIO

Image: 06606528

COMPLAINT

MARTA GREENBERG ET AL VS. DIGITAL MEDIA SOLUTIONS LLC ET AL

001C06606528

**Instructions:**

Please place this sheet on top of the document to be scanned.

35

SUM-100

# SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

DIGITAL MEDIA SOLUTIONS LLC, a Delaware limited liability company, et al (Additional Parties Attachment form is attached)

## YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

MARTA GREENBERG, an individual, et al  
(Additional Parties Attachment form is attached)

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Superior Court of California, County of San Francisco  
400 McAllister Street, San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Daniel Balsam, Law Offices of D. Balsam, 2601C Blanding Ave. #271, Alameda, CA 94501, 415-869-2873

DATE: **DEC 11 2018**  
(Fecha)

CLERK OF THE COURT  
(Secretario)

CASE: **CC-18-572010**  
(Número de caso)

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)



### NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):  
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):
4. ☐ by personal delivery on (date):

Page 1 of 1

SUM-200(A)

SHORT TITLE:

Greenberg v. Digital Media Solutions LLC

CASE NUMBER:

CGC-18-572010

**INSTRUCTIONS FOR USE**

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☒ Plaintiff    ☐ Defendant    ☐ Cross-Complainant    ☐ Cross-Defendant

JOHN JUDGE, an individual;

KAREN MANDEL, an individual;

ANDREW MONROE, an individual; and

KATIE VAN CLEAVE, an individual;

Plaintiffs

Page 2 of 3

Page 1 of 1

SUM-200(A)

SHORT TITLE:

Greenberg v. Digital Media Solutions LLC

CASE NUMBER:

CGC-18-572010

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**List additional parties** (Check only one box. Use a separate page for each type of party.):
☐ Plaintiff    ☒ Defendant    ☐ Cross-Complainant    ☐ Cross-Defendant

BILCO MEDIA INC., a business entity of unknown organization;

ALLAN HUGHES, an individual; and

DOES 1-100;

Defendants

Page 3 of 3

Page 1 of 1

FAXED

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15 Attorneys for Plaintiffs

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)**

18 MARTA GREENBERG, an individual;  
 19 JOHN JUDGE, an individual;  
 20 KAREN MANDEL, an individual;  
 21 ANDREW MONROE, an individual; and  
 22 KATIE VAN CLEAVE, an individual;

23 Plaintiffs,

24 v.

25 DIGITAL MEDIA SOLUTIONS LLC, a  
 26 Delaware limited liability company;  
 27 BILCO MEDIA INC., a business entity of  
 28 unknown organization;  
 29 ALLAN HUGHES, an individual; and  
 30 DOES 1-100;

31 Defendants.

**FILED**  
 San Francisco County Superior Court

DEC 11 2018

CLERK OF THE COURT  
 BY: *Kalena Johnson*  
 Deputy Clerk

) Case No.:

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**CCC-18-572010**

**1. VIOLATIONS OF CALIFORNIA  
 RESTRICTIONS ON UNSOLICITED  
 COMMERCIAL E-MAIL (Cal. Bus. &  
 Prof. Code § 17529.5)**

COME NOW PLAINTIFFS MARTA GREENBERG *et al* and file this Complaint for one cause of action against Defendants DIGITAL MEDIA SOLUTIONS LLC *et al* and allege as follows:

## I. INTRODUCTION AND SUMMARY OF THE COMPLAINT

1. Plaintiffs MARTA GREENBERG *et al* bring this Action against professional “spamvertiser” DIGITAL MEDIA SOLUTIONS LLC dba “Platinum Auto Warranty” (“PLATINUM”), and its third party advertising networks and affiliates a/k/a publishers (“Marketing Partners”), for advertising/conspiring to advertise in at least 282 unlawful unsolicited commercial emails (“spams”) hawking auto warranty products that Plaintiffs received. Figure 1 on the next page is a representative sample.

2. No Plaintiff gave direct consent to receive commercial email advertisements from, or had a preexisting or current business relationship with, PLATINUM or any other entity advertised in the spams.

3. The spams all materially violated California Business & Professions Code § 17529.5 (“Section 17529.5”) due to materially false and deceptive information contained in or accompanying the email headers: From Names, registration information for the sending domain names in the Sender Email Addresses, and Subject Lines.

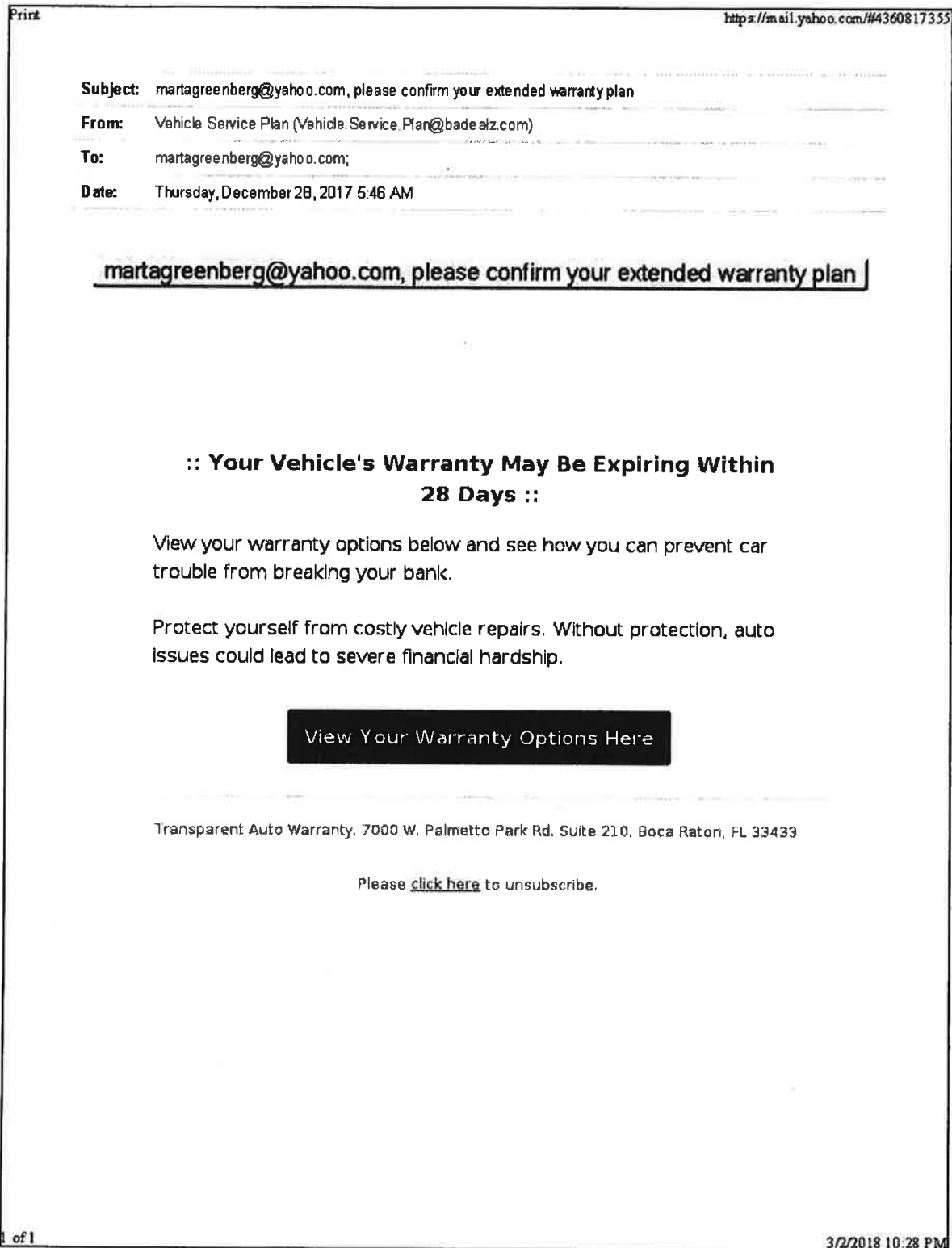
4. PLATINUM is strictly liable for advertising in spams sent by its Marketing Partners. Even *if* PLATINUM’s Marketing Partners are not directly liable under Section 17529.5 for advertising in the spams, they are still liable on the basis of civil conspiracy, as discussed herein.

5. Spam recipients are not required to allege or prove reliance or actual damages to have standing. *See* Cal. Bus. & Prof. Code § 17529.5(b)(1)(A)(iii). Plaintiffs elect to recover statutory damages only and forego recovery of any actual damages. *See* Cal. Bus. & Prof. Code § 17529.5(b)(1)(B).

6. This Court should award liquidated damages of \$1,000 per email as provided by Section 17529.5(b)(1)(B)(ii), and not consider any reduction in damages, because PLATINUM and its Marketing Partners failed to implement reasonably effective systems to prevent advertising in/conspiring to advertise in unlawful spams. The unlawful elements of these spams represent willful acts of falsity and deception, rather than clerical errors.

7. This Court should award Plaintiffs their attorneys’ fees pursuant to Section 17529.5(b)(1)(C). *See also* Cal. Code of Civil Procedure § 1021.5, providing for attorneys fees when private parties bear the costs of litigation that confers a benefit on a large class of persons; here, by reducing the amount of false and deceptive spam received by California residents.





**Figure 1**

## II. PARTIES

### A. Plaintiffs

8. MARTA GREENBERG ("GREENBERG") was domiciled in and a citizen of the State of California, when she received the spams at issue. The spams at issue were sent to GREENBERG's email address martagreenberg@yahoo.com that she ordinarily accesses from California.

9. JOHN JUDGE ("JUDGE") was domiciled in and a citizen of the State of California, when he received the spams at issue. The spams at issue were sent to JUDGE's email address jojudge23@yahoo.com that he ordinarily accesses from California.

10. KAREN MANDEL ("MANDEL") was domiciled in and a citizen of the State of California, when she received the spams at issue. The spams at issue were sent to MANDEL's email address klmandel@yahoo.com that she ordinarily accesses from California.

11. ANDREW MONROE ("MONROE") was domiciled in and a citizen of the State of California, when he received the spams at issue. The spams at issue were sent to MONROE's email address ndr\_w\_monroe@yahoo.com that he ordinarily accesses from California.

12. KATIE VAN CLEAVE ("VAN CLEAVE") was domiciled in and a citizen of the State of California, when she received the spams at issue. The spams at issue were sent to VAN CLEAVE's email address dbkatie77@yahoo.com that she ordinarily accesses from California.

13. Plaintiffs' joinder in this Action is proper pursuant to Cal. Code of Civil Procedure § 378 because Plaintiffs seek relief based on the same series of transactions or occurrences: all received similar spams in the same general time period advertising PLATINUM's websites and its auto warranties, and all of those spams were sent by PLATINUM or its Marketing Partners. The same questions of law (e.g., violations of Section 17529.5, strict liability) and fact (e.g., direct consent, practices and procedures to prevent advertising in unlawful spam) will arise in this Action. The fact that each Plaintiff does not sue for *exactly* the same spams does not bar joinder: "It is not necessary that each plaintiff be interested as to every cause of action or as to all relief prayed for. Judgment may be given for one or more of the plaintiffs according to their respective right to relief." Cal. Code Civ. Proc. § 378(b).



**B. Defendants*****1. Digital Media Solutions LLC***

14. Plaintiffs are informed and believe and thereon allege that Defendant DIGITAL MEDIA SOLUTIONS LLC dba Platinum Auto Warranty ("PLATINUM") is now, and was at all relevant times, a Delaware limited liability company with its principal place of business in Clearwater, Florida, who sells auto warranties via its website platinumautowarranty.com. Plaintiffs are informed and believe and thereon allege that PLATINUM is responsible for advertising its auto warranty products in all of the 282 spams at issue in this Action.

15. Plaintiffs are informed and believe and thereon allege that PLATINUM entered into various contracts ("Marketing Partner Contracts") with third-party spam networks and publishers ("Marketing Partners") who sent some, if not all, of the spams at issue. Pursuant to the terms of the Marketing Partner Contracts, PLATINUM and each respective Marketing Partner agreed to share in the benefits and risks derived from email advertising campaigns advertising PLATINUM's websites/products and the Marketing Partners' services. Plaintiffs further allege, on information and belief, that pursuant to the terms of the Marketing Partner Contracts, the Marketing Partner Defendants who sent the spams used their own lists of email addresses (as opposed to lists provided by PLATINUM) as the source of intended recipients for the spams. Plaintiffs further allege, on information and belief, that in some cases, the Marketing Partners (as opposed to PLATINUM) created the unlawful content in the emails, such as the From Names, registration information for the sending domain names in the Sender Email Addresses, Subject Lines, and registration information for the domain names in the clickthrough hyperlinks. Just as Valpak also advertises its own mailing services when sending advertisements for its partners, so did PLATINUM's Marketing Partners advertise their own emailing services when they sent these spams for PLATINUM.

***2. Bilco Media Inc.***

16. Plaintiffs are informed and believe and thereon allege that Bilco Media Inc. ("BILCO") is an unknown entity of unknown organization with an unknown primary place of business. 229 of the spams at issue were sent from domain names registered to "William Bilco" and BILCO, claiming the address 13727 SW 152nd Street, Miami, FL 33186. However, the business at that address is a commercial mail receiving agency – Mail Mart USA – and Plaintiffs are informed and believe that BILCO does not and never had a box at Mail Mart USA, or at least, not under

that name. The sending domain names registered to “William Bilco” and BILCO are:  
 00hullo.com, badealz.com, buyerdate.com, deal4utoday.com, dealssss.com, dicountforu.com,  
 greatsavinsites.com, holidayspecails.com, jajajawelcome.com, peaksavingsites.com,  
 savinsitenow.com.

### 3. *Allan Hughes*

17. Plaintiffs are informed and believe and thereon allege that Allan Hughes (“HUGHES”) is an individual claiming a business address to be PO Box 8 STN A, Nanaimo, British Columbia V9R5K4 Canada. 53 of the spams at issue were sent from domain names registered to HUGHES: alewjfol.com, comeonletsdoit10.com, comeonletsdoit7.com, eoanodo.com, fwpopgd.com, letsgetitdone1.com, letsgetitdone2.com, letsgetitdone3.com, letsgetitdone4.com, letsgetitdone5.com, letsgetitdone6.com, letsgetitdone9.com, makejnks.com, qjndiesp.com, qncorpw.com, realojtnsl.com.

### 4. *DOE Defendants*

18. Plaintiffs do not know the true names or legal capacities of the Defendants designated herein as DOES 1 through 5, inclusive – PLATINUM’s Marketing Partners – and therefore sue said Defendants under the fictitious name of “DOE.” Plaintiffs allege that certain Defendant(s) designated herein as DOEs advertised in/conspired with PLATINUM to advertise in some of the spams at issue because their domain names appear in the redirect links after a recipient clicks the link in the spam. I.e., when a person clicks a link in the spam, that launches an Internet browser that immediately redirects through several URLs before landing at PLATINUM’s website platinumautowarranty.com. Thus, these DOEs actually direct a person who clicks the link in the spam to PLATINUM’s website to purchase an auto warranty; an advertisement without the opportunity to purchase is ineffective. These DOEs operate at least 5 domain names used in the redirect links, all of which were proxy-registered to prevent a person from identifying the true owner: canttrussit.com, chpsuuuy.com, clrinbox.com, coozyfltr.com, and grssypddn.com.

19. Plaintiffs do not know the true names or legal capacities of the Defendants designated herein as DOES 6 through 100, inclusive – PLATINUM’s Marketing Partners – and therefore sue said Defendants under the fictitious name of “DOE.” Plaintiffs allege that certain Defendant(s) designated herein as DOEs advertised in/conspired with PLATINUM to advertise in some of the spams at issue.

20. Plaintiffs are informed and believe and thereon allege that each of the Defendants designated herein as a DOE is legally responsible in some manner for the matters alleged in this complaint, and is legally responsible in some manner for causing the injuries and damages of which Plaintiffs complain. Plaintiffs are informed and believe and thereon allege that each of the Defendants designated herein as a DOE Defendant was, at all times relevant to the matters alleged within this complaint, acting in conjunction with the named Defendants, whether as a director, officer, employee, partner, affiliate, customer, participant, or co-conspirator. When the identities of DOE Defendants 1-100 are discovered, or otherwise made available, Plaintiffs will seek to amend this Complaint to allege their identity and involvement with particularity.

#### 5. Joinder

21. Defendants' joinder in this Action is proper pursuant to Cal. Code of Civil Procedure § 379 because Plaintiffs seek relief jointly and severally from Defendants arising from the same series of transactions and occurrences, and because common questions of law and fact as to Defendants will arise in the Action. The fact that all Defendants may not be implicated in all spams does not bar joinder: "It is not necessary that each defendant be interested as to every cause of action or as to all relief prayed for. Judgment may be given against one or more defendants according to their respective liabilities." Cal. Code Civ. Proc. § 379.

### III. JURISDICTION AND VENUE

#### A. Jurisdiction is Proper in a California Superior Court

22. This California Superior Court has jurisdiction over the Action because Defendants targeted their advertisements at Plaintiffs in California, and each Plaintiff's claims exceed the \$10,000 maximum for small claims court.

#### B. Venue is Proper in San Francisco County

23. Venue is proper in San Francisco County (or indeed, *any* county in California of Plaintiffs' choosing) because PLATINUM is a foreign company that has not designated the location and address of a principal office in California or registered to do business in California with the California Secretary of State. *See Easton v. Superior Court of San Diego (Schneider Bros. Inc.)*, 12 Cal. App. 3d 243, 246 (4th Dist. 1970).

#### IV. 282 UNLAWFUL SPAMS

24. Plaintiffs allege that Defendants engaged in tortious conduct: “wrongful act[s] other than a breach of contract for which relief may be obtained in the form of damages or an injunction.”

See Merriam-Webster, [www.merriam-webster.com/dictionary/tort](http://www.merriam-webster.com/dictionary/tort) (last viewed Nov. 5, 2013).

25. California’s False Advertising Law, Business & Professions Code § 17500

prohibits “not only advertising which is false, but also advertising which[,]  
although true, is either actually misleading or which has a capacity, likelihood or  
tendency to deceive or confuse the public.” . . . [T]he UCL and the false  
advertising law prohibit deceptive advertising even if it is not actually false.

*Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 226-27 (2d Dist. 2013) (citation omitted).

##### A. The Emails at Issue are “Spams”; Recipients and Counts

26. The emails at issue are “commercial email advertisements”<sup>1</sup> because they were initiated for the purpose of advertising and promoting PLATINUM’s and its Marketing Partners’ products and services.

27. The emails are “unsolicited commercial email advertisements”<sup>2</sup> because no Plaintiff gave “direct consent”<sup>3</sup> to, or had a “preexisting or current business relationship”<sup>4</sup> with PLATINUM or any of its Marketing Partners.

<sup>1</sup> “‘Commercial e-mail advertisement’ means any electronic mail message initiated for the purpose of advertising or promoting the lease, sale, rental, gift offer, or other disposition of any property, goods, services, or extension of credit.” Bus. & Prof. Code § 17529.1(c).

<sup>2</sup> “‘Unsolicited commercial e-mail advertisement’ means a commercial e-mail advertisement sent to a recipient who meets both of the following criteria: (1) The recipient has not provided direct consent to receive advertisements from the advertiser. (2) The recipient does not have a preexisting or current business relationship, as defined in subdivision (l), with the advertiser promoting the lease, sale, rental, gift offer, or other disposition of any property, goods, services, or extension of credit.” Bus. & Prof. Code § 17529.1(o).

<sup>3</sup> “‘Direct consent’ means that the recipient has expressly consented to receive e-mail advertisements *from the advertiser*, either in response to a clear and conspicuous request for the consent or at the recipient’s own initiative.” Bus. & Prof. Code § 17529.1(d) (emphasis added).

<sup>4</sup> “‘Preexisting or current business relationship,’ as used in connection with the sending of a commercial e-mail advertisement, means that the recipient has made an inquiry and has provided his or her e-mail address, or has made an application, purchase, or transaction, with or without consideration, regarding products or services offered by the advertiser. [.]” Bus. & Prof. Code § 17529.1(l).

28. Plaintiffs did not consent or acquiesce to receive the spams at issue. Plaintiffs did not waive any claims related to the spams at issue.

29. Defendants advertised in and/or conspired to advertise in at least 282 unlawful spams that Plaintiffs received at their "California email addresses"<sup>5</sup>:

PLAINTIFF	SPAMS RECEIVED	PLAINTIFF	SPAMS RECEIVED
GREENBERG	29	MONROE	53
JUDGE	79	VAN CLEAVE	58
MANDEL	63	TOTAL	282

30. The spams are all unlawful because there is materially false and deceptive information contained in or accompanying the email headers, as described in more detail below.

31. Although "fraud" in the context of a Cal. Business & Professions Code § 17500 action does not mean the common-law tort,<sup>6</sup> Plaintiffs are not bringing claims for fraud and are not required to plead with particularity. Nevertheless, Exhibit A shows a table of the spams at issue, sorted by recipient and stating for each spam: the recipient, recipient's email address, date/time, From Name, sending domain name, registrant of the sending domain name, Subject Line, and landing website. Plaintiffs incorporate Exhibit A herein by reference.

<sup>5</sup> "'California e-mail address' means 1) An e-mail address furnished by an electronic mail service provider that sends bills for furnishing and maintaining that e-mail address to a mailing address in this state; 2) An e-mail address ordinarily accessed from a computer located in this state; 3) An e-mail address furnished to a resident of this state." Bus. & Prof. Code § 17529.1(b).

<sup>6</sup> See *Day v. AT&T Corporation*, 63 Cal. App. 4th 325, 332 (1st Dist. 1998) ("Actual deception or confusion caused by misleading statements is not required . . . . The term 'fraudulent' as used in the section 'does not refer to the common law tort of fraud' but only requires a showing members of the public 'are likely to be deceived.' No proof of direct harm from a defendant's unfair business practice need be shown, such that '[a]llegations of actual deception, reasonable reliance, and damage are unnecessary.'") (citations omitted). See also *Buller v. Sutter Health*, 160 Cal. App. 4th 981, 986 (1st Dist. 2008) ("In order to state a cause of action under the fraud prong of the [Unfair Competition Law] a plaintiff need not show that he or others were actually deceived or confused by the conduct or business practice in question. The 'fraud prong of [the UCL] is unlike common law fraud or deception. A violation can be shown even if no one was actually deceived, relied upon the fraudulent practice, or sustained any damage. Instead, it is only necessary to show that members of the public are likely to be deceived").



**B. Spams With Generic From Names Misrepresent *Who* is Advertising in the Spams and Violate Cal. Business & Professions Code § 17529.5(a)(2)**

32. Section 17529.5(a)(2) prohibits falsified or misrepresented information contained in or accompanying email headers.

33. The From Name field is part of email headers. The From Name does *not* include the Sender Email Address. So, for example, if an email's From Line says: "John Doe <johndoe@yahoo.com>", the From Name is *just* "John Doe."

34. The From Name in an email's headers is, not surprisingly, supposed to identify who the email is *from*; it is not supposed to be an advertising message. Because computers must use standard protocols in order to communicate, the Internet Engineering Task Force created a collection of "Requests for Comment" ("RFCs") that define the rules that enable email to work. According to RFC 5322 at ¶ 3.6.2 (emphasis in original):

The "From:" field specifies the author(s) of the message, that is, the mailbox(es) of the person(s) or system(s) responsible for the writing of the message. . . . In all cases, the "From:" field SHOULD NOT contain any mailbox that does not belong to the author(s) of the message.

35. Plaintiffs do not insist on any *particular* label (e.g., "Digital Media Solutions LLC," "Platinum Auto Warranty," etc.) in the From Name field. Rather, Plaintiffs contend that the text, whatever it is, cannot misrepresent *who* the emails are from.

36. The From Name is important to an email user, because in almost all email programs, the inbox view only displays a list of emails, showing the From Name, Subject Line, and Send Date. Therefore, even *if* the body of the email identifies the advertiser, the recipient will not know that until s/he has already clicked to open the email.

37. Indeed, empirical evidence has demonstrated that the From Name is the *most* important factor email recipients use to determine whether or not an email is spam. See eMarketer, E-Mail Open Rates Hinge on 'Subject' Line, *available at*

Select Criteria Used by US Internet Users to Decide Whether to Click on an E-Mail "Report Spam" or "Junk" Button without Opening the Actual Message, December 2006 (% of respondents)	
"From" line	73%
"Subject" line	69%
Note: n=2,252 AOL, MSN/Hotmail, Yahoo!, Lycos, Excite, Gmail, Netscape or Compuserve users Source: Email Sender and Provider Coalition (ESPC) and Ipsos, March 2007 082363 www.emarketer.com	

<http://www.emarketer.com/Article/E-Mail-Open-Rates-Hinge-on-Subject-Line/1005550> (Oct. 31, 2007). Thus, a From Name that misrepresents who a spam is from is *not* a mere technical error; rather, it is a material misrepresentation of the most important part of the email header.



38. Although Plaintiffs do *not* sue under the federal CAN-SPAM Act, Plaintiffs note that the Federal Trade Commission has also identified the From Name as the first item in misleading header information in its guide to CAN-SPAM compliance when it stated

1. Don't use false or misleading header information. Your "From," "To," "Reply-To," and routing information – including the originating domain name and email address – *must be accurate and identify the person or business who initiated the message.*

Federal Trade Commission, CAN-SPAM Act: A Compliance Guide for Business, available at <http://www.business.ftc.gov/documents/bus61-can-spam-act-compliance-guide-business> (emphasis added).

39. In *Balsam v. Trancos Inc.*, the unlawful spams were sent from generic From Names that did not *identify* anyone. The trial court ruled, and the court of appeal affirmed in all respects, that generic From Names violate the statute because they misrepresent *who* the emails are from:

... The seven [ ] emails do not truly reveal who sent the email . . . . The [ ] "senders" identified in the headers of the [ ] seven emails do not exist or are otherwise misrepresented, namely Paid Survey, Your Business, Christian Dating, Your Promotion, Bank Wire Transfer Available, Dating Generic, and Join Elite. . . . Thus the sender information ("from") is misrepresented.

203 Cal. App. 4th 1083, 1088, 1090-91, 1093 (1st Dist. 2012), *petition for review denied*, 2012 Cal. LEXIS 4979 (Cal. May 23, 2012), *petition for certiorari denied*, 2012 U.S. LEXIS 8423 (U.S. Oct. 29, 2012), *petition for rehearing denied*, 2013 U.S. LEXIS 243 (U.S. Jan. 7, 2013). More specifically, *Balsam* confirmed that generic From Names that "do not exist or are otherwise misrepresented when they do not represent any real company and cannot be readily traced back to the true owner/sender" violate the statute. *Id.* at 1093. The Court affirmed the award of \$1,000 liquidated damages for the seven emails with misrepresented information in the From Name field, even though most of the spams identified the advertiser in the body. *Id.* at 1091, 1093. Therefore, truthful information in the body of a spam does not cure misrepresented information contained in or accompanying the headers.

40. Here, all of the spams have the From Name "Vehicle Service Plan" which is generic text that misrepresents *who* the spam is really from.

41. In *Rosolowski v. Guthy-Renker LLC*, the court permitted From Names that were not the sender's official corporate name when the identity of the sender was readily ascertainable in the body. 230 Cal. App. 4th 1403, 1407, 1416 (2d Dist. 2014). However, the From Names in that

case (Proactiv and Wen Hair Care) were the advertiser's fanciful trademarks and well-known brands with their own websites. But here, unlike the spams in *Rosolowski*, all of the From Names are generic; they are not well-known trademarks and/or brands readily associated with Defendants. There is no way an ordinary consumer, looking at the emails in his/her inbox, could readily associate "Vehicle Service Plan" with Defendants, as opposed to PLATINUM's many competitors. Moreover, none of the spams at issue identify the sender in the body, so *Balsam* would control, not *Rosolowski*.

42. Even if a spam purports to identify the sender in the body, using that information alone as described in *Rosolowski*, an ordinary consumer can still never be sure that the information is true, because spammers can and often do make false claims. For example, a "phishing" spam might appear to come from Bank of America, even including BofA's logo and address in the body of the spam, although the spam was not in fact sent from BofA. *See e.g.* Federal Trade Commission, *Phishing*, <https://www.consumer.ftc.gov/articles/0003-phishing>. As another example, in 2017 the Federal Trade Commission sued Daniel Croft for unlawful spamming. Press Release, FTC Halts Imposter Scheme that Falsely Claimed Connection to the Agency (Apr. 11, 2017), available at <https://www.ftc.gov/news-events/press-releases/2017/04/ftc-halts-imposter-scheme-falsely-claimed-connection-agency>. Among other false and misleading representations, the body of the spams led consumers to believe that certain other parties had been shut down by the FTC for putting spyware on their computers, that Croft was affiliated with the FTC, and that the FTC had appointed Croft to contact consumers to inform them of the lawsuit and to remove the spyware from their computers. *FTC v. Daniel L. Croft*, No. 9:17-cv-80425 (S.D. Fl. filed Apr. 3, 2017), complaint at ¶¶ 22-28 (Docket #1). *Rosolowski* appears to inherently assume that whatever appears on the face of a spam must be true. But that assumption is wrong. *See e.g.* Cal. Business & Professions Code § 17529.1(i) ("Many spammers have become so adept at masking their tracks that they are rarely found") and (j) ("actual spammers can be difficult to track down due to some return addresses that show up on the display as 'unknown' and many others being obvious fakes"). As shown by the above examples, an ordinary consumer can never ascertain the true identity of the sender of a spam simply by looking at the body of the email, so *Rosolowski* is illogical, irrelevant, and inapplicable. And here, the spams do not identify the sender in the body, so the only way a recipient could even attempt to identify the Marketing Partner responsible for the spam is to click on a link contained

1 in the spam or search the source code of the email – both of which require opening the email first  
2 – in direct violation of *Balsam*.

3 **C. Spams Sent From Domain Names Registered So As to Not Be Readily Traceable to the**  
4 **Sender Violate Cal. Business & Professions Code § 17529.5(a)(2)**

5 43. Section 17529.5(a)(2) prohibits falsified, misrepresented, or forged information contained  
6 in or accompanying in email headers.

7 44. Registration information for the domain names used to send spams is information  
8 contained in or accompanying email headers.

9 45. “[H]eader information in a commercial e-mail is falsified or misrepresented for purposes  
10 of section 17529.5(a)(2) when it uses a sender domain name that *neither* identifies the actual  
11 sender on its face *nor* is readily traceable to the sender using a publicly available online database  
12 such as WHOIS.” *Balsam*, 203 Cal. App. 4th at 1101 (emphasis in original).

13 46. 229 of the 282 spams – 81% – were sent from domain names that were registered to  
14 BILCO, an entity that does not exist, and that claims an address at a commercial mail receiving  
15 agency without specifying the box number.

16 47. Thus, for most of the spams at issue, Plaintiffs could not identify PLATINUM’s  
17 Marketing Partner by querying the Whois database. In those instances, the only way a recipient  
18 could even attempt to identify the Marketing Partner responsible for the spam is to click on a link  
19 contained in the spam or search the source code of the email – both of which require opening the  
20 email first – in direct violation of *Balsam*.

21 **D. Spams With False and Misrepresented Subject Lines Violate Cal. Business &**  
22 **Professions Code § 17529.5(a)(2)**

23 48. Section 17529.5(a)(2) prohibits falsified, misrepresented, or forged information in email  
24 headers.

25 49. The Subject Line is part of email headers.<sup>7</sup>

26 <sup>7</sup> The Internet Engineering Task Force’s RFC 5322 – which essentially defines how email works  
27 – includes Subject Lines as part of email headers at ¶ 3.6. Network Working Group, *RFC 5322*  
28 (Oct. 2008), <https://tools.ietf.org/html/rfc5322>. So does Wikipedia, LifeWire.com (a website  
29 about technology), IBM, WhatIsMyIPAddress.com, and many other sources. Congress may be  
30 one of the few, if not the only, entity that believes that Subject Lines are not part of email  
31 headers. (See 15 U.S.C. § 7702(8), defining “header information” as “the source, destination,  
and routing information attached to an electronic mail message, including the originating domain  
name and originating electronic mail address, and any other information that appears in the line  
identifying, or purporting to identify, a person initiating the message.”) But California is not

50. All but three of the spams that Plaintiffs received contain Subject Lines with falsified and/or misrepresented information. Plaintiffs allege that these Subject Lines are *absolutely* false and/or misrepresented and violate Section 17529.5(a)(2), as opposed to misleading *relative* to the contents/body of the spams, which would be a violation of Section 17529.5(a)(3).

51. The Subject Lines include:

- “[name or email address], please confirm your extended warranty plan.” This Subject Line contains material misrepresentations because it falsely claims that the recipient has (or at a minimum has applied for) an extended warranty plan with PLATINUM.
- “[name or email address], Confirm your Auto Warranty Plan Extension.” This Subject Line contains material misrepresentations because it falsely claims that the recipient has an extended warranty plan with PLATINUM, and furthermore has requested to extend it.
- “[name or email address], Your Auto Warranty is Running Out!” and “Attention [name], Your Auto Warranty is Running Out!” These Subject Lines contain material misrepresentations because they falsely claim that not only does the recipient has an extended warranty plan with PLATINUM, but that the plan’s contract term is about to expire.

All three Subject Line falsely reference a preexisting business relationship that does not in fact exist, for the purpose of inducing the recipient into believing that the email is from an entity with whom the recipient has done business, which is designed to lure the recipient into clicking and opening the spam, and ultimately, sending money to PLATINUM.

bound by federal definitions. In fact, in *Kleffman v. Vonage Holdings Inc.*, the California Supreme Court acknowledged the existence of the federal definition, and then immediately stated that “A similar definition was proposed, *but not adopted*, during the legislative process that culminated in section 17529.5(a)(2)’s enactment.” 49 Cal. 4th 334, 340 n.5 (2010) (emphasis added). Thus, it is not as though the California Legislature were unaware of the question of Subject Lines, for *Kleffman* expressly states that the Legislature rejected a definition similar to the federal definition. And by rejecting that definition, the California Legislature demonstrated its knowledge and understanding that Subject Lines are in fact part of email headers. Every spammer and court that cites *Kleffman* (and its progeny) for the proposition that Subject Lines are not part of email headers is incorrect.



**E. PLATINUM is Strictly Liable for Advertising in Spams Sent By its Marketing Partners; PLATINUM's Marketing Partners are Also Liable on the Basis of Civil Conspiracy**

52. PLATINUM is strictly liable for advertising in the spams at issue even if third parties hit the Send button. Cal. Bus. & Prof. Code § 17529(j), (k); *Hypertouch Inc. v. ValueClick Inc. et al* 192 Cal. App. 4th 805, 820-21 (2d Dist. 2011). Of course, PLATINUM's Marketing Partners are also liable for conspiring with PLATINUM to advertise in unlawful spams.

53. Plaintiffs are informed and believe and thereon allege that no one forced PLATINUM to outsource any of its advertising to third party spam networks and spammers, but PLATINUM chose to contract with and partner with them (the Marketing Partners), including but not limited to the other named Defendants, to advertise its websites for the purpose of selling its products and services for a profit.

54. Plaintiffs are informed and believe and thereon allege that PLATINUM and its Marketing Partners agreed to share the benefits and the risks of the marketing venture.

55. Plaintiffs are informed and believe and thereon allege that PLATINUM and its Marketing Partners formed a conspiracy (or conspiracies) to advertise PLATINUM's websites and auto warranty product, by virtue of signing the Marketing Contracts. Defendants operated the conspiracy by sending and advertising in spams pursuant to the Marketing Contracts. Defendants committed wrongful acts pursuant to the conspiracy by advertising in unlawful spams, and Plaintiffs were damaged by receiving those unlawful spams.

56. Plaintiffs are informed and believe and thereon allege that PLATINUM may have provided some of the content (i.e. From Names and Subject Lines) to its Marketing Partners, and PLATINUM and its Marketing Partners explicitly or tacitly agreed to use such content to send and advertise in unlawful spams, and PLATINUM's Marketing Partners directed themselves towards those wrongful goals by using that content in the spams that were sent. But, to the extent that PLATINUM's Marketing Partners may have created certain false and misrepresented elements of the spams (e.g. putting generic text in the From Name field and including false and misrepresented Subject Lines), PLATINUM's Marketing Partners must be held liable for violations of Section 17529.5 because such wrongful acts were committed in accordance with the general conspiracy to advertise PLATINUM's websites and the Marketing Partners' services.

57. To the extent that some of the Marketing Partners (e.g. the spam networks) did not actually send the spams, and their domain names appear in the redirect links, they are still liable

1 for conspiring with PLATINUM to advertise its auto warranty product. But for these Marketing  
 2 Partners' actions, the spams would not have happened because these Marketing Partners provided  
 3 codes and links for other Marketing Partners to use to effectuate the sending of the spams and to  
 4 ultimately enable the recipients to buy the auto warranty product.

5 **F. Some of PLATINUM's Marketing Partners Also Advertised in the Spams, Making**  
 6 **them Directly Liable Under the Statute**

7 58. Plaintiffs allege that PLATINUM's Marketing Partners both sent *and* advertised in the  
 8 spams at issue. Each spam contains domain names owned and controlled by whatever Marketing  
 9 Partner sent or was responsible for sending any particular spam. Because the Marketing  
 10 Partners' domain names appear in the headers and source code of the spams, the Marketing  
 11 Partners are advertising in the spams. Plaintiffs are informed and believe and thereon allege that  
 12 the Marketing Partners did this, in part, to advertise their own services as email marketers.

13 **G. Plaintiffs Sue for Statutory Liquidated Damages; No Proof of Reliance or Actual**  
 14 **Damages is Necessary**

15 59. The California Legislature defined liquidated damages to be \$1,000 per spam. Cal. Bus.  
 16 & Prof. Code § 17529.5(b)(1)(B)(ii).

17 60. Plaintiffs are informed and believe and thereon allege that the \$1,000 per spam figure is  
 18 comparable with damages in other areas of consumer protection law, e.g., \$500-\$1,500 statutory  
 19 damages per junk fax, pursuant to Cal. Business & Professions Code § 17538.43(b).

20 61. Plaintiffs' rightful and lawful demand for liquidated damages in the amount of \$1,000 per  
 21 email is necessary to further the California Legislature's objective of protecting California  
 22 residents from unlawful spam.

23 62. Section 17529.5 does not require Plaintiffs to quantify their actual damages, allege or  
 24 prove reliance on the advertisements contained in the spams, or purchase the goods and services  
 25 advertised in the spams. *Recipients* of unlawful spam have standing to sue and recover  
 26 liquidated damages. Cal. Bus. & Prof. Code § 17529.5(b)(1)(A)(iii); *Hypertouch*, 192 Cal. App.  
 27 4th at 820, 822-23, 828. Plaintiffs do not seek actual damages in this Action, only liquidated  
 28 damages. Cal. Bus. & Prof. Code § 17529.5(b)(1)(B).

29 **H. Defendants' Actions Were Willful and Preclude any Reduction in Statutory Damages**

30 63. Section 17529.5 authorizes this Court to reduce the statutory damages to \$100 per spam.  
 31 Cal. Bus. & Prof. Code § 17529.5(b)(2). But, to secure the reduction, Defendants have the  
 burden of proof to demonstrate not only that they *established* practices and procedures to prevent



1 unlawful spamming, but also that they *implemented* those practices and procedures, and that the  
2 practices and procedures are *effective*.

3 64. Plaintiffs are informed and believe and thereon allege that Defendants have not  
4 established and implemented, with due care, practices and procedures reasonably designed to  
5 effectively prevent unsolicited commercial e-mail advertisements that are in violation of  
6 Section 17529.5.

7 65. Even if Defendants had established any practices and procedures to prevent advertising in  
8 unlawful spam, such practices and procedures were not reasonably designed so as to be effective.

9 66. Even if Defendants reasonably designed practices and procedures to prevent advertising  
10 in unlawful spam, such practices and procedures were not implemented so as to be effective.

11 67. Moreover, Plaintiffs are informed and believe and thereon allege that Defendants  
12 intended to deceive recipients of their spam messages through the use of generic/misrepresented  
13 information in From Names, falsely-registered domain names used to send the spams, and  
14 false/misrepresented Subject Lines, as described herein.

15 68. Subject Lines and From Names do not write themselves. Domain names do not register  
16 themselves. The false and misrepresented information contained in and accompanying the email  
17 headers are not "clerical errors." Plaintiffs are informed and believe and thereon allege that  
18 Defendants went to great lengths to create falsified and misrepresented information contained in  
19 and accompanying the email headers in order to deceive recipients, Internet Service Providers,  
20 and spam filters.

21 69. Plaintiffs are informed and believe and thereon allege that Defendants intended to profit,  
22 actually profited, and continue to profit, and were unjustly enriched by, their wrongful conduct  
23 as described herein.

### 24 25 **FIRST CAUSE OF ACTION**

#### 26 **[Violations of California Restrictions on Unsolicited Commercial Email,** 27 **California Business & Professions Code § 17529.5]** 28 **(Against All Defendants)**

29 70. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

30 71. Plaintiffs received most of the spams within one year prior to filing the Complaint. As  
31 for the few spams that Plaintiffs received more than one year prior to filing the Complaint,

1 Plaintiffs and PLATINUM entered into an agreement on November 9, 2018 to extend the statute  
2 of limitations through December 14, 2018.

3 72. Defendants advertised in at least 282 unsolicited commercial email advertisements that  
4 Plaintiffs received at their California electronic mail addresses that had materially falsified  
5 and/or misrepresented information contained in or accompanying the email headers, in violation  
6 of Section 17529.5. The unlawful elements of these spams represent willful acts of falsity and  
7 deception, rather than clerical errors.

8 73. The California Legislature set liquidated damages at One Thousand Dollars (\$1,000) per  
9 email.

10 74. Defendants have not established and implemented, with due care, practices and  
11 procedures to effectively prevent advertising in unlawful spams that violate Section 17529.5 that  
12 would entitle them to a reduction in statutory damages.

13 75. Plaintiffs seek reimbursement of attorneys' fees and costs as authorized by Section  
14 17529.5(b)(1)(C).

15 76. The attorneys' fees provision for a prevailing spam recipient is typical of consumer  
16 protection statutes and supported by Cal. Code of Civil Procedure § 1021.5. By prosecuting this  
17 action, Plaintiffs expect to enforce an important right affecting the public interest and thereby  
18 confer a significant benefit on the general public or a large class of persons. The necessity and  
19 financial burden of private enforcement is such as to make the award appropriate, and the  
20 attorneys' fees should not, in the interest of justice, be paid out of the recovery of damages.

21  
22 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set forth.

23  
24 **PRAYER FOR RELIEF**

25 **(Against All Defendants)**

26 A. An Order from this Court declaring that Defendants violated California Business &  
27 Professions Code § 17529.5 by advertising in unlawful spams.

28 B. Liquidated damages against Defendants in the amount of \$1,000 for each of at least 282  
29 unlawful spams, as authorized by Section 17529.5(b)(1)(B)(ii), for a total of at least  
30 \$282,000, as follows:  
31

PLAINTIFF	DAMAGES SOUGHT	PLAINTIFF	DAMAGES SOUGHT
GREENBERG	\$29,000	MONROE	\$53,000
JUDGE	\$79,000	VAN CLEAVE	\$58,000
MANDEL	\$63,000	<b>TOTAL</b>	<b>\$282,000</b>

- C. Liquidated damages against PLATINUM, in the amount of \$1,000 for each of the 282 unlawful spams (\$282,000) that it advertised in that Plaintiffs received, according to proof.
- D. Liquidated damages against BILCO MEDIA INC., jointly and severally with PLATINUM, in the amount of \$1,000 for each of the 229 unlawful spams (\$229,000) that it advertised in and/or conspired to advertise in that Plaintiffs received, according to proof.
- E. Liquidated damages against ALLAN HUGHES, jointly and severally with PLATINUM, in the amount of \$1,000 for each of the 53 unlawful spams (\$53,000) that he advertised in and/or conspired to advertise in that Plaintiffs received, according to proof.
- F. Liquidated damages against each DOE 1-100 (when their true names are learned and they are added to the Action), jointly and severally with PLATINUM, in the amount of \$1,000 for each of the unlawful spams they advertised in and/or conspired to advertise in that Plaintiffs received, according to proof.
- G. Attorneys' fees as authorized by Section 17529.5(b)(1)(C) and Cal. Code of Civil Procedure § 1021.5 for violations of Section 17529.5.
- H. Costs of suit.
- I. Such other and further relief as the Court deems proper.

THE LAW OFFICES OF DANIEL BALSAM

Date: December 11, 2018

BY: *Daniel L Balsam*  
 DANIEL BALSAM  
 Attorneys for Plaintiffs

**EXHIBIT A**

29

29  
^ Bilco



[illegible]



Recipient	Date	From Name	Sending Domain	Registrant	Judge	Subject	Advertiser (Landing Page)
jojude23@yahoo.com;	2018-02-21 0923	Vehicle Service Plan	qncorpw.com	Allan Hughes, Canada		jojude23@yahoo.com, Confirm your Auto Warranty Plan Extension	platinumautowarranty.com
jojude23@yahoo.com;	2018-02-22 2120	Vehicle Service Plan	alewifol.com	Allan Hughes, Canada		jojude23@yahoo.com, Confirm your Auto Warranty Plan Extension	platinumautowarranty.com
jojude23@yahoo.com;	2018-02-26 1200	Vehicle Service Plan	alewifol.com	Allan Hughes, Canada		jojude23@yahoo.com, Confirm your Auto Warranty Plan Extension	platinumautowarranty.com
jojude23@yahoo.com;	2018-02-28 0839	Vehicle Service Plan	qindiesp.com	Allan Hughes, Canada		jojude23@yahoo.com, Confirm your Auto Warranty Plan Extension	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-01 1634	Vehicle Service Plan	letsgetitdone1.com	Allan Hughes, Canada		jojude23@yahoo.com, Confirm your Auto Warranty Plan Extension	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-02 1232	Vehicle Service Plan	letsgetitdone2.com	Allan Hughes, Canada		jojude23@yahoo.com, Your Auto Warranty is Running Out!	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-03 0316	Vehicle Service Plan	dcountforu.com	Bilco Media Inc., Miami FL		jojude23@yahoo.com, please confirm your extended warranty plan	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-03 1130	Vehicle Service Plan	letsgetitdone3.com	Allan Hughes, Canada		jojude23@yahoo.com, Your Auto Warranty is Running Out!	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-04 0808	Vehicle Service Plan	dcountforu.com	Bilco Media Inc., Miami FL		jojude23@yahoo.com, please confirm your extended warranty plan	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-04 1156	Vehicle Service Plan	letsgetitdone4.com	Allan Hughes, Canada		jojude23@yahoo.com, Your Auto Warranty is Running Out!	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-05 1556	Vehicle Service Plan	letsgetitdone5.com	Allan Hughes, Canada		Attention jojudge23@yahoo.com, Your Auto Warranty is Running Out!	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-06 0739	Vehicle Service Plan	letsgetitdone6.com	Allan Hughes, Canada		Attention jojudge23@yahoo.com, Your Auto Warranty is Running Out!	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-09 1901	Vehicle Service Plan	dcountforu.com	Allan Hughes, Canada		jojude23@yahoo.com, please confirm your extended warranty plan	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-10 1537	Vehicle Service Plan	dcountforu.com	Bilco Media Inc., Miami FL		jojude23@yahoo.com, please confirm your extended warranty plan	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-11 0031	Vehicle Service Plan	dcountforu.com	Bilco Media Inc., Miami FL		jojude23@yahoo.com, please confirm your extended warranty plan	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-11 0126	Vehicle Service Plan	letsgetitdone9.com	Allan Hughes, Canada		jojude23@yahoo.com, Your Auto Warranty is Running Out!	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-13 1034	Vehicle Service Plan	dcountforu.com	Bilco Media Inc., Miami FL		jojude23@yahoo.com, please confirm your extended warranty plan	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-13 2332	Vehicle Service Plan	dcountforu.com	Bilco Media Inc., Miami FL		jojude23@yahoo.com, please confirm your extended warranty plan	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-14 0652	Vehicle Service Plan	dcountforu.com	Bilco Media Inc., Miami FL		jojude23@yahoo.com, please confirm your extended warranty plan	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-14 1317	Vehicle Service Plan	dcountforu.com	Bilco Media Inc., Miami FL		jojude23@yahoo.com, please confirm your extended warranty plan	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-14 1653	Vehicle Service Plan	comeonletsdoit10.com	Allan Hughes, Canada		Attention jojudge23@yahoo.com, Your Auto Warranty is Running Out!	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-15 0140	Vehicle Service Plan	dcountforu.com	Bilco Media Inc., Miami FL		jojude23@yahoo.com, please confirm your extended warranty plan	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-15 1237	Vehicle Service Plan	dcountforu.com	Bilco Media Inc., Miami FL		jojude23@yahoo.com, please confirm your extended warranty plan	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-16 1625	Vehicle Service Plan	dcountforu.com	Bilco Media Inc., Miami FL		jojude23@yahoo.com, please confirm your extended warranty plan	platinumautowarranty.com
jojude23@yahoo.com;	2018-03-31 1139	Vehicle Service Plan	comeonletsdoit7.com	Allan Hughes, Canada		Attention jojudge23@yahoo.com, Your Auto Warranty is Running Out!	platinumautowarranty.com
jojude23@yahoo.com;	2018-04-01 1706	Vehicle Service Plan	comeonletsdoit7.com	Allan Hughes, Canada		Attention jojudge23@yahoo.com, Your Auto Warranty is Running Out!	platinumautowarranty.com

Page 1

Mandel

Recipient	Date	From Name	Sending Domain	Registrant	Subject	Advertiser (Landing Page)
kimandel@yahoo.com;	2018-03-02 1240	Vehicle Service Plan	letsgetitdone2.com	Allan Hughes, Canada	Karen, Your Auto Warranty is Running Out!	platinumautowarranty.com
kimandel@yahoo.com;	2018-03-03 0340	Vehicle Service Plan	dcountforu.com	Bilco Media Inc., Miami FL	Karen, please confirm your extended warranty plan	platinumautowarranty.com
kimandel@yahoo.com;	2018-03-03 1139	Vehicle Service Plan	letsgetitdone3.com	Allan Hughes, Canada	Karen, Your Auto Warranty is Running Out!	platinumautowarranty.com
kimandel@yahoo.com;	2018-03-04 0839	Vehicle Service Plan	dcountforu.com	Bilco Media Inc., Miami FL	Karen, please confirm your extended warranty plan	platinumautowarranty.com
kimandel@yahoo.com;	2018-03-04 1158	Vehicle Service Plan	letsgetitdone4.com	Allan Hughes, Canada	Karen, Your Auto Warranty is Running Out!	platinumautowarranty.com
kimandel@yahoo.com;	2018-03-05 1554	Vehicle Service Plan	letsgetitdone5.com	Allan Hughes, Canada	Karen, Your Auto Warranty is Running Out!	platinumautowarranty.com
kimandel@yahoo.com;	2018-03-06 0736	Vehicle Service Plan	letsgetitdone6.com	Allan Hughes, Canada	Karen, Your Auto Warranty is Running Out!	platinumautowarranty.com
kimandel@yahoo.com;	2018-03-09 1835	Vehicle Service Plan	dcountforu.com	Bilco Media Inc., Miami FL	Karen, please confirm your extended warranty plan	platinumautowarranty.com
kimandel@yahoo.com;	2018-03-10 1554	Vehicle Service Plan	dcountforu.com	Bilco Media Inc., Miami FL	Karen, please confirm your extended warranty plan	platinumautowarranty.com
kimandel@yahoo.com;	2018-03-11 0122	Vehicle Service Plan	dcountforu.com	Bilco Media Inc., Miami FL	Karen, please confirm your extended warranty plan	platinumautowarranty.com
kimandel@yahoo.com;	2018-03-12 1908	Vehicle Service Plan	dcountforu.com	Bilco Media Inc., Miami FL	Karen, please confirm your extended warranty plan	platinumautowarranty.com
kimandel@yahoo.com;	2018-03-13 1020	Vehicle Service Plan	dcountforu.com	Bilco Media Inc., Miami FL	Karen, please confirm your extended warranty plan	platinumautowarranty.com
kimandel@yahoo.com;	2018-03-13 2307	Vehicle Service Plan	dcountforu.com	Bilco Media Inc., Miami FL	Karen, please confirm your extended warranty plan	platinumautowarranty.com
kimandel@yahoo.com;	2018-03-31 1054	Vehicle Service Plan	comeonletsdoit7.com	Allan Hughes, Canada	Attention Karen, Your Auto Warranty is Running Out!	platinumautowarranty.com
kimandel@yahoo.com;	2018-04-01 1606	Vehicle Service Plan	comeonletsdoit7.com	Allan Hughes, Canada	Attention Karen, Your Auto Warranty is Running Out!	platinumautowarranty.com

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^ Allan Hughes



Page 1

Recipient	Date	From Name	Sending Domain	Registrant	Subject	Advertiser (Landing Page)
ndrw_monroe@yahoo.com;	2018-02-22 2112	Vehicle Service Plan	alewifol.com	Allan Hughes, Canada	Andrew, Confirm your Auto Warranty Plan Extension	platinumautowarranty.com
ndrw_monroe@yahoo.com;	2018-02-26 1154	Vehicle Service Plan	alewifol.com	Allan Hughes, Canada	Andrew, Confirm your Auto Warranty Plan Extension	platinumautowarranty.com
ndrw_monroe@yahoo.com;	2018-02-27 0532	Vehicle Service Plan	makejinks.com	Allan Hughes, Canada	Andrew, Confirm your Auto Warranty Plan Extension	platinumautowarranty.com
ndrw_monroe@yahoo.com;	2018-02-28 0828	Vehicle Service Plan	qjndiesp.com	Allan Hughes, Canada	Andrew, please confirm your extended warranty plan	platinumautowarranty.com

53

45  
^ Bilco

8  
^ Allan Hughes

Page 1



VanCleave

Advertiser (Landing Page)  
 platinumautowarranty.com  
 platinumautowarranty.com

Subject  
 Michael r, please confirm your extended warranty plan  
 Michael r, please confirm your extended warranty plan

Registrant  
 Bilco Media Inc., Miami FL  
 Bilco Media Inc., Miami FL

Sending Domain  
 dcountforu.com  
 dcountforu.com

From Name  
 Vehicle Service Plan  
 Vehicle Service Plan

Date  
 2018-03-17 06:19  
 2018-03-17 22:43

Recipient  
 dbkatie77@yahoo.com;  
 dbkatie77@yahoo.com;

58

46  
 ^ Bilco

12  
 ^ Allan Hughes

CM-010

FILED

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Daniel L. Balsam (SBN 260423) THE LAW OFFICES OF DANIEL BALSAM 2601C Blanding Avenue #271 Alameda, CA 94501 TELEPHONE NO.: 415-869-2873 FAX NO.: 415-869-2873 ATTORNEY FOR (Name): Plaintiffs Marta Greenberg et al		FOR COURT USE ONLY <b>FILED</b> San Francisco County Superior Court DEC 11 2018 CLERK OF THE COURT BY: <i>[Signature]</i> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		
CASE NAME: Greenberg v. Digital Media Solutions LLC et al		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less) <b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
		CASE NUMBER: <b>CGC-18-572010</b> JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties    d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve    e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence    f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary    b. ☒ nonmonetary; declaratory or injunctive relief    c. ☐ punitive
4. Number of causes of action (specify): 1
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: Dec. 11, 2018

Daniel L. Balsam

(TYPE OR PRINT NAME)

*[Signature]*

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor  
Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

